

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Appellant,

vs.

AMERICAN BROADCASTING
COMPANIES, INC.; THE
ASSOCIATED PRESS; CABLE NEWS
NETWORK, INC.; CHESAPEAKE
MEDIA I, LLC, D/B/A KSNV-TV;
LOS ANGELES TIMES
COMMUNICATIONS, LLC; THE
NEW YORK TIMES COMPANY;
SCRIPPS BROADCASTING
HOLDINGS LLC D/B/A KTNV-TV;
WP COMPANY LLC D/B/A THE
WASHINGTON POST AND LAS
VEGAS REVIEW-JOURNAL,

Respondents.

No. 75518

Electronically Filed
Apr 25 2018 03:08 p.m.

DOCKETING STATEMENT
CIVIL APPEALS
JENNIFER A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 23
County Clark Judge Honorable Stefany Miley (previously Honorable Richard Scotti)
District Ct. Case No. A-17-764030-W; A-17-764169-W

2. **Attorney filing this docketing statement:**

Attorneys Nick D. Crosby, Esq. and Jackie V. Nichols, Esq.
Telephone 702-382-0711
Firm Marquis Aurbach Coffing
Address 10001 Park Run Drive, Las Vegas, Nevada 89145
Client Las Vegas Metropolitan Police Department

If this is a joint statement by multiple appellants, add the names and address of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. **Attorneys representing respondents:**

Attorneys Joel E. Tasca, Esq. and Justin A. Shiroff, Esq.
Telephone 702-471-7000
Firm Ballard Spahr LLP
Address 1980 Festival Plaza Drive, Suite 900, Las Vegas, Nevada 89135
Clients American Broadcasting Companies, Inc.; The Associated Press; Cable News Network, Inc.; Chesapeake Media I, LLC, d/b/a KSNV-TV; Los Angeles Times Communications, LLC; The New York Times Company; Scripps Broadcasting Holdings LLC d/b/a KTNV-TV; and WP Company LLC d/b/a The Washington Post

Attorneys Margaret A. McLetchie, Esq. and Alina M. Shell, Esq.
Telephone 702-728-5300
Firm McLetchie Shell LLC
Address 701 East Bridger Avenue, Suite 520, Las Vegas, Nevada 89101
Client Las Vegas Review-Journal

(List additional counsel on separate sheet if necessary)

4. **Nature of disposition below (check all that apply):**

- | | |
|--|---|
| ☐ Judgment after bench trial | ☐ Dismissal |
| ☐ Judgment after jury verdict | ☐ Lack of Jurisdiction |
| ☐ Summary judgment | ☐ Failure to state a claim |
| ☐ Default judgment | ☐ Failure to prosecute |
| ☐ Grant/Denial of NRCP 60(b) relief | ☐ Other (specify) |

- ☐ Grant/Denial of injunction
☐ Grant/Denial of declaratory relief
☐ Review of agency determination
- ☐ Divorce decree:
☐ Original ☐ Modification
☒ Other disposition (specify) Granting of Respondents' Petition for Writ of Mandamus Pursuant to Nevada's Public Records Act

5. Does this appeal raise issues concerning any of the following:

- ☐ Child Custody
☐ Venue
☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

On or about April 19, 2018, the Las Vegas Review Journal filed a Motion for Attorney's Fees and Costs in District Court Case A-17-764030-W. That motion is currently being briefed and is scheduled for argument on June 19, 2018.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This appeal involves the Nevada Public Records Act. In and around October and November 2017, Respondents made several requests to Appellant for disclosure of various records. Given the on-going investigation at the time, in addition to other public policy considerations, including privacy interests and protection of investigative techniques, Appellant did not produce the requested records. The District Court held a hearing on the Writ of Mandamus and determined that the requested records were not confidential and the balance of interests weighed in favor of public access. As such, the District Court required the production of all requested records within six months. The District Court also ordered Respondents to pay for the requested records in accordance with Act. At a subsequent hearing, the District Court required Respondents to pay

Appellant the cost associated with the production of the requested records, but limited the amount Appellant may charge, including the actual cost Appellant may charge for staff time associated with the records that require extraordinary use of personnel.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

- (1) Whether the District Court erred by determining that Appellant did not meet its burden in withhold the requested records.
- (2) Whether the District Court erred in applying the balancing test set forth by this Court in *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990) and its progeny and determining that public's interest in disclosure outweighs any governmental interest in withholding public records.
- (3) Whether the District Court erred in failing to consider NRS 289.030, which permits inspection of the video from an officer's Body Worn Camera when ordering production of the Body Worn Camera footage.
- (4) Whether the District Court erred in its order noticed on March 2, 2018.
- (5) Whether the District Court erred by interpreting NRS 239.055 to limit a governmental entity's actual cost for staff time to not exceed \$0.50 concerning pre-copy preparations.
- (6) Whether the District Court erred by interpreting NRS 239.055 to specifically exclude electronic records, including Body Worn Camera footage and 911 calls.
- (7) Whether the District Court erred by permitting the Respondents to pay the ordered costs associated with production of the requested records in six monthly equal installments.
- (8) Whether the District Court erred in its order entered on March 9, 2018.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Steven B. Wolfson, Clark County District Attorney vs. The Las Vegas Review Journal, Case No. 70916.

Clark County School District vs. The Las Vegas Review Journal, Case No. 73525.

Clark County Office of the Coroner/Medical Examiner vs. The Las Vegas Review Journal, Case No. 74604.

These cases are similar to the extent they involve records requests by the media and challenges to the nondisclosure by the public entity.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. **Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This appeal presents important questions of public policy and two substantial issues of first impression regarding the Nevada Public Records Act. This case involves records requested by the media from the 1 October Shooting that occurred at the Route 91 Music Festival near the Las Vegas Strip. On one hand, this case concerns public policy considerations and the application of the balancing test of the government's interest in protecting its investigative techniques versus public access as set forth in *Donrey of Nevada v. Bradshaw*. Furthermore, this case also involves the interpretation and application of NRS 239.052 and NRS 239.3055, which permit the governmental entities to charge requestors for the production of public records. In particular, the issue is whether a governmental entity may charge for staff time, in excess of \$0.50 when production of the public records require extraordinary use of personnel.

13. **Assignment to the Supreme Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court under NRAP 17(a)(13) as it raises, as a principal issue, a question of first impression involving the Nevada Public Records Act and the government's interest in investigative techniques. This matter is also subject to retention by the Supreme Court under NRAP 17(a)(14) as this cases involves matters raising principal issues of statewide public importance.

14. **Trial.** If this action proceeded to trial, how many days did the trial last? N/A
Was it a bench or jury trial? N/A
15. **Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
- No.

TIMELINESS OF NOTICE OF APPEAL

16. **Date of entry of written judgment or order appealed from** March 2, 2018
and March 9, 2018.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. **Date written notice of entry of judgment or order was served.** March 2, 2018.

Was service by: For the March 2, 2018 Order, service was effectuated by:

- ☐ Delivery
☒ Mail/electronic/fax

However, no notice of entry of order was served regarding the March 9, 2018 as that Order was entered by the District Court.

18. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCp 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

- ☐ NRCP 50(b) Date of filing
☐ NRCP 52(b) Date of filing
☐ NRCP 59 Date of filing

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See AA Primo Builders v. Washington*, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion

(c) Date written notice of entry of order resolving tolling motion was served

Was service by:

- ☐ Delivery
☐ Mail

19. Date notice of appeal filed March 30, 2018.

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Appellants, the Las Vegas Metropolitan Police Department, filed its notice of appeal on March 30, 2018.

Respondent Las Vegas Review Journal filed its notice of cross-appeal on April 13, 2018.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- ☒ NRAP 3A(b)(1) ☐ NRS 38.205

- | | |
|--|---------------------------------------|
| ☐ NRAP 3A(b)(2) | ☐ NRS 233B.150 |
| ☐ NRAP 3A(b)(3) | ☐ NRS 703.376 |
| ☐ Other (specify) | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) allows for appeal of a final judgment of a district court. On March 2, 2018, the District Court entered its Order Granting Amended Public Records Act Applications Pursuant to Nev. Rev. Stat. § 239.011/Petition for Writ of Mandamus, ordering the Appellant to produce all requested records. As such, the District Court's order was a final judgment because it disposed of all claims in this case.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Petitioners: American Broadcasting Companies, Inc.; The Associated Press; Cable News Network, Inc.; Chesapeake Media I, LLC, d/b/a KSNV-TV; Los Angeles Times Communications, LLC; The New York Times Company; Scripps Broadcasting Holdings LLC d/b/a KTNV-TV; and WP Company LLC d/b/a The Washington Post

Petitioner: Las Vegas Review-Journal

Respondent: Las Vegas Metropolitan Police Department

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the date of formal disposition of each claim.

The Respondents filed an Amended Public Records Act Application pursuant to NRS 239.011/Petition for Writ of Mandamus seeking various records associated with the 1 October shooting. Respondents also claim that the Act prohibits a governmental entity from charging for staff time associated with production of the public records.

Appellants contend that these records should not be disclosed pursuant to the balancing test applied by *Donrey* and its progeny. Appellants also argue that it is permitted to charge for staff time of the actual cost it incurs when disclosure of public records requires the extraordinary use of personnel.

The District Court found in favor of Respondents and ordered that Appellant produce the records requested. The District Court also determined that while staff time was permitted for documents, not electronic records, the cost of staff time was limited to \$0.50 per page for pre-copy preparations.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

After the Appellant filed the instant appeal, Respondent Las Vegas Review Journal filed a Motion for Attorney's Fees and Costs. That motion is still pending below

(b) Specify the parties remaining below:

Appellant, the Las Vegas Metropolitan Police Department, and Respondent Las Vegas Review Journal.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

The order is independently appealable under NRAP 3A(b)(8).

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Las Vegas Metropolitan Police
Department

Name of appellant

Nick D. Crosby, Esq. and Jackie V.
Nichols, Esq.

Name of counsel of record

April 25, 2018

Date

/s/ Jackie V. Nichols

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 25th day of April, 2018, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By electronic service in accordance with the Court's Master Service List as follows:

Justin Shiroff, Esq.
Joel Tasca, Esq.

Margaret A. McLetchie, Esq.
Alina M. Shell, Esq.

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Lansford W. Levitt, Esq.
4230 Christy Way
Reno, Nevada 89519
Settlement Judge

Dated this 25th day of April, 2018.



Signature



Marquis Aurbach Coffing

Craig R. Anderson, Esq.

Nevada Bar No. 6882

Nick D. Crosby, Esq.

Nevada Bar No. 8996

Jackie V. Nichols, Esq.

Nevada Bar No. 14246

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Attorneys for Respondent Las Vegas

Metropolitan Police Department

DISTRICT COURT

CLARK COUNTY, NEVADA

American Broadcasting Companies, Inc.; The
Associated Press; Cable News Network, Inc.;
Chesapeake Media I, LLC, d/b/a KSNV-TV; Los
Angeles Times Communications, LLC; The New
York Times Company; and WP Company LLC
d/b/a The Washington Post,

Petitioners,

vs.

Las Vegas Metropolitan Police Department,

Respondent.

Case No.: A-17-764030-W

A-17-764169-W

Dept. No.: 2

NOTICE OF ENTRY OF ORDER

TO: ALL INTERESTED PARTIES; AND THEIR ATTORNEYS OF RECORD:

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1 PLEASE TAKE NOTICE that an Order Granting Amended Public Records Act
2 Applications Pursuant to Nev. Rev. Stat. § 239.011/Petition for Writ of Mandamus was entered
3 on the 2nd day of March, 2018, a copy of which is attached hereto.

4 Dated this 2nd day of March, 2018.

5 MARQUIS AURBACH COFFING

6
7 By: /s/ Jackie V. Nichols
8 Craig R. Anderson, Esq.
9 Nevada Bar No. 6882
10 Nick D. Crosby, Esq.
11 Nevada Bar No. 8996
12 Jackie V. Nichols, Esq.
13 Nevada Bar No. 14246
14 10001 Park Run Drive
15 Las Vegas, Nevada 89145
16 Attorneys for Respondent Las Vegas
17 Metropolitan Police Department
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MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 2nd day of March, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Joel E. Tasca, Esq.
Justin A. Shiroff, Esq.
Ballard Spahr LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135
LVCTIntake@ballardspahr.com
shrioffj@ballardspahr.com
tasca@ballardspahr.com
lvdocket@ballardspahr.com
Attorneys for Petitioners

Margaret A. McLetchie, Esq.
Alina M. Shell, Esq.
McLetchie Shell LLC
701 East Bridger Avenue, Suite 520
Las Vegas, Nevada 89101
maggie@nvlitigation.com
alina@nvlitigation.com
Attorneys for Petitioner Las Vegas Review-
Journal

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A



An employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



1 **Marquis Aurbach Coffing**
 2 Craig R. Anderson, Esq.
 3 Nevada Bar No. 6882
 4 Nick D. Crosby, Esq.
 5 Nevada Bar No. 8996
 6 Jackie V. Nichols, Esq.
 7 Nevada Bar No. 14246
 8 10001 Park Run Drive
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 10 Telephone: (702) 382-0711
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 12 canderson@maclaw.com
 13 ncrosby@maclaw.com
 14 jnichols@maclaw.com
 15 Attorneys for Respondent Las Vegas
 16 Metropolitan Police Department

DISTRICT COURT**CLARK COUNTY, NEVADA**

11 American Broadcasting Companies, Inc.; The
 12 Associated Press; Cable News Network, Inc.;
 13 Chesapeake Media I, LLC, d/b/a KSNV-TV; Los
 14 Angeles Times Communications, LLC; The New
 15 York Times Company; and WP Company LLC
 16 d/b/a The Washington Post,

Case No.: A-17-764030-W

A-17-764169-W

Dept. No.: 2

Petitioners,

vs.

Las Vegas Metropolitan Police Department,

Respondent.

19 **ORDER GRANTING AMENDED PUBLIC RECORDS ACT APPLICATIONS**
 20 **PURSUANT TO NEV. REV. STAT. § 239.011/PETITION FOR WRIT OF MANDAMUS**

21 This matter came before the Court on Petitioners American Broadcasting Companies,
 22 Inc. ("ABC"), the Associated Press ("AP"), Cable News Network, Inc. ("CNN"), Chesapeake
 23 Media I, LLC, d/b/a KSNV-TV ("KSNV-TV"), Los Angeles Times Communications, LLC
 24 ("Los Angeles Times"), The New York Times Company ("The New York Times"), Scripps
 25 Broadcasting Holdings, LLC d/b/a KTNV-TV ("KTNV-TV") and WP Company LLC d/b/a The
 26 Washington Post's ("Washington Post") (collectively the "Coalition") Amended Public Records
 27 Act Application Pursuant to Nev. Rev. Stat. § 239.011/ Petition for Writ of Mandamus; and
 28 Petitioner Las Vegas Review-Journal's ("Review-Journal", and collectively with the Coalition,

1 "Petitioners") Amended Public Records Act Application Pursuant to Nev. Rev. Stat. 239.011/
2 Petition for Writ of Mandamus (collectively, the "Petitions").

3 The Review-Journal filed its Opening Brief in Support of Amended Public Records Act
4 Application Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus on December
5 8, 2017. The Coalition filed its Substantive Joinder thereto on December 15, 2017. Metro filed
6 its Opposition to Petitioner Las Vegas Review Journal's Public Records Act Application
7 Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus on January 8, 2018. Metro
8 filed its Opposition to the Coalition's Petition on January 16, 2018. The Review-Journal filed its
9 Reply on January 22, 2018. Finally, the Coalition filed its Reply on January 31, 2018.

10 At the February 7, 2018 hearing on the Petitions, Joel E. Tasca, Esq., of the law firm
11 Ballard Spahr LLP appeared on behalf of the Coalition; Maggie McLetchie, Esq., of the law firm
12 McLetchie Shell LLC, appeared on behalf of the Review-Journal; and Nick D. Crosby, Esq. and
13 Jacqueline Nichols, Esq., of the law firm Marquis Aurbach Coffing, appeared on behalf of the
14 Las Vegas Metropolitan Police Department ("Metro"). Based on the Court's careful review of
15 the parties' briefs, oral argument by counsel and the pleadings and papers on file, for the reasons
16 stated by the Court and reflected in the record, and for good cause shown, the Court rules as
17 follows:

- 18 1. The Nevada Public Records Act (the "Act") is codified at Nev. Rev. Stat. § 239.
- 19 2. The Act provides that public records must be made available to the public for
20 inspection or copying.
- 21 3. The purpose of the Act is to foster democratic principles by providing members of
22 the public with access to inspect and copy public records to the extent permitted under Nevada
23 law.
- 24 4. The Act, as well as the First Amendment to the Constitution, provides the press
25 with the ability to obtain and publish information about issues that affect the public interest and
26 information about the conduct of government officials. They further provide the press with the
27 tools to ensure that the government is responsible and efficient.

1 5. Furthermore, they provide the press with the tools that assist the public in holding
2 its government accountable.

3 6. Government records are presumed to be public records. Any restriction to the
4 public's right of access to public records must be narrowly applied.

5 7. Metro bears a heavy burden in preventing disclosure of public records pursuant to
6 the Act.

7 8. Metro must satisfy a two-pronged test to justify non-disclosure. Metro must first
8 establish, by a preponderance of the evidence, that the public records sought are confidential.
9 Metro must then prove, by a preponderance of the evidence, that its interest in non-disclosure
10 outweighs the public's interest in access.

11 9. The Act establishes a presumption in favor of public access.

12 10. The Court recognizes that governmental entities are generally required to provide
13 citations to legal authority supporting non-disclosure within five (5) business days pursuant to
14 Nev. Rev. Stat. § 239.0107(d). However, as to the Petitioners' argument that Metro waived the
15 right to withhold public records in this case by failing to timely respond, the Court rejects this
16 argument.

17 11. The Court finds that there was no implied, express, or statutory waiver due to
18 Metro's pre-petition conduct, particularly with respect to the extraordinary circumstances
19 surrounding the October 1 Massacre.

20 12. The Court finds that Metro had a duty to redact confidential information and
21 produce the non-confidential portions of the public records, if it contended that the requested
22 public records were confidential or otherwise protected from disclosure. Wholesale withholding
23 of public records with the general claim of confidentiality suggests to this Court that the records
24 have not been sufficiently scrutinized.

25 13. The Court finds that asserting a blanket protection over all categories of public
26 records is improper.

27 14. Metro had a duty to prove, by a preponderance of the evidence, that each public
28 record (or part thereof) is confidential. The Court finds that Metro failed to meet this burden.

1 15. The Court finds that there exists no rule that records can be withheld merely
2 because they relate to an ongoing investigation. Metro still has the duty to show that the public
3 records of the ongoing investigation are confidential.

4 16. In light of Metro's preliminary report concerning the October 1 Massacre, the
5 entire universe of investigative records cannot be so sensitive as to warrant wholesale
6 withholding.

7 17. Additionally, Sheriff Lombardo publicly stated that it is Metro's responsibility to
8 ensure timely disclosure of public records in this case.

9 18. Metro, however, failed to specifically explain how the public record production
10 would impede the investigation.

11 19. To the extent that the disclosure might have some detrimental impact on the
12 investigation, that impact is outweighed by the public interest. The public has the right to know
13 the manner in which its government officials are carrying out their public safety responsibilities.

14 20. The Court finds that any personal privacy concerns implicated by the public
15 records disclosure can be remedied by redactions, including individual names (other than
16 government officials), addresses, phone numbers, social security numbers, descriptions of
17 individuals, and social media data for all individuals.

18 21. The Court also rejects Metro's contention – that the horrifying 911 calls may be
19 traumatic to close family members who hear the voices of their loved ones – as too speculative to
20 weigh against disclosure.

21 22. In the rare and limited circumstances that any such concern may arise, Metro may
22 prepare a privilege log for future review and consideration by this Court.

23 23. The Court denies Metro's request for an in camera review. The Court finds that
24 the time has passed for Metro to assert any valid objection to production.

25 24. The Court finds that Metro has engaged in wholesale withholding of public
26 records with insufficiently specific reasons to do so.

27 25. The Court concludes that Metro failed to prove by a preponderance of the
28 evidence that any of the requested public records are confidential.

1 26. The Court further concludes that the strong public interest in favor of disclosure,
2 together with the strong presumption in favor of production, outweighs any governmental
3 interest in withholding the public records.

4 27. The Court finds that the public records sought include: 911 calls, body camera
5 data, as well as dash cams, CCTV videos, evidence logs, dispatch information, interview reports,
6 search warrant returns, affidavits of probable cause, purchase orders and no-bid contracts, and
7 information on any weapons obtained during the investigation into the October 1 Massacre.

8 Accordingly, and in light of the Court's findings in this case, the Court orders as follows:

9 IT IS HEREBY ORDERED that the Petitions are GRANTED in their entirety;

10 IT IS HEREBY FURTHER ORDERED that Metro shall immediately begin producing
11 public records responsive to the public records request at issue in the Petitions;

12 IT IS HEREBY FURTHER ORDERED that Metro shall produce the public records on a
13 rolling basis, as public records are appropriately redacted and available for disclosure, without
14 unnecessary delay;

15 IT IS HEREBY FURTHER ORDERED that Metro shall exercise the utmost good faith
16 in producing the public records on a timely basis;

17 IT IS HEREBY FURTHER ORDERED that, if Metro comes across any individual public
18 record that may be highly confidential or where redactions may not be practicable, Metro shall
19 meet and confer with Petitioners in an attempt to resolve the issue. The Court cautions that this
20 right to potentially seek a protective order is to be used very sparingly;

21 IT IS HEREBY FURTHER ORDERED that any protective order Metro may seek is not
22 to be used to withhold entire groups of public records;

23 IT IS HEREBY FURTHER ORDERED that the filing of any subsequent motion for a
24 protective order shall not cause any delay in the production of all other requested public records;

25 IT IS HEREBY FURTHER ORDERED that the Court will hold a Status Conference in
26 30 days to review a report, to be given by the Parties, covering what has and has not been
27 produced pursuant to this Order. The Status Conference shall be held on March 7, 2018 at 9:00
28 a.m.;

1 IT IS HEREBY FURTHER ORDERED that at the Status Conference, the Parties shall
2 have an opportunity to explain whether there has been good faith communication regarding the
3 production;

4 IT IS HEREBY FURTHER ORDERED that at the Status Conference, the Court shall
5 hear any objections with respect to the delay in disclosure or the need for more time for Metro to
6 produce;

7 IT IS HEREBY FURTHER ORDERED that acceptable redactions shall include
8 individual names (other than government officials), addresses, phone numbers, social security
9 numbers, descriptions of individuals, and social media data for all individuals. To the extent that
10 any public record produced might specifically identify the names of the individuals or the
11 description of the individuals (or any other personal information), that information shall be
12 redacted; and

13 IT IS HEREBY FURTHER ORDERED that Metro shall make any and all public records
14 subject to this proceeding available at Metro's office for review by Petitioners, particularly
15 where production of those public records is either too burdensome or impossible otherwise.

16 IT IS HEREBY FURTHERED ORDERED that the Court is not waiving the payment
17 obligation and Petitioners shall pay the fees associated with the production of the public records
18 in accordance with NRS Chapter 239.

19 ...

20 ...

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1 IT IS HEREBY FURTHER ORDERED that the Parties shall submit supplemental
2 briefing regarding the fee amount to be charged with respect to the production of the public
3 records.

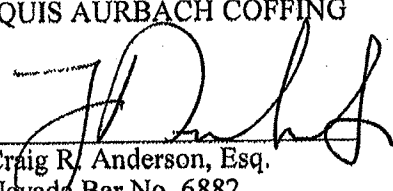
4 IT IS SO ORDERED.

5 DATED this 27th day of February, 2018.

6
7 
DISTRICT COURT JUDGE

8 Respectfully Submitted By:
9 

10 MARQUIS AURBACH COFFING

11
12 By: 

13 Craig R. Anderson, Esq.

14 Nevada Bar No. 6882

15 Nick D. Crosby, Esq.

16 Nevada Bar No. 8996

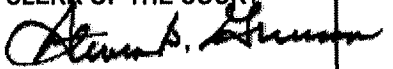
17 Jackie V. Nichols, Esq.

18 Nevada Bar No. 14246

19 10001 Park Run Drive

20 Las Vegas, Nevada 89145

21 Attorneys for Respondent Las Vegas Metropolitan Police Department



1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 **AMERICAN BROADCASTING COMPANIES,**
7 **INC., et al.,**

8 **Plaintiffs,**

9 **vs.**

10 **LAS VEGAS METROPOLITAN POLICE**
11 **DEPARTMENT, et al.,**

12 **Defendants.**

Case No.: A-17-764030-W
Dept. No.: II

Date: March 7, 2018
Time: 9:00 a.m.

**ORDER REGARDING PUBLIC
RECORDS REQUEST**

13 **I. INTRODUCTION**

14 This action involves Petitioners' request for records from the Las Vegas Metropolitan
15 Police Department ("Metro") pursuant to Nevada's Public Records Act. Petitioners include
16 the Las Vegas Review Journal, American Broadcasting Companies, Associated Press, Cable
17 News Network, Inc., New York Times, and other press (hereinafter referred to as the
18 "Media"). This Court already held that Metro must produce several categories of records,
19 including body cam recordings, dash cam recordings, CCTV recordings, 911 calls, dispatch
20 logs, evidence logs, interview reports, and search warrant data.

21 The Court set the hearing conducted on Wednesday, March 7, 2018, to determine the
22 fee that Metro could charge for the gathering and copying of the documents and audio/visual
23 data. Having considered the briefs and arguments of counsel, the Court hereby interprets the
24 Nevada Public Records Act and determines the fees that Metro may charge.

25 As a prelude to the findings that follow, this Court holds Metro and its individual
26 officers in very high esteem; understands the dangerous encounters that Metro officers face
27 every day; and regrets the limited budget that has been given to Metro to not only protect the
28 health, welfare, and safety of the public, but to respond to massive requests for production of

1 documents. Nevertheless, the purview of the responsibility of this Court is only to apply the
2 law as given to the facts at hand, leaving it to others to determine whether the law should be
3 changed.

4 Explained below, with one exception, Metro is not allowed to charge the Media for
5 staff time to get the records ready for copying. Accordingly, the Court DENIES Metro's
6 demand for its range of fees from \$233,750 to \$458,159 to comply with the records request.
7 Metro must reevaluate and report back to this Court with the proper fee that it proposes to
8 charge the Media, consistent with this Order. Despite the need for such further reevaluation,
9 Metro must immediately begin complying with the Media's request.

10 **II. PURPOSE OF THE PUBLIC RECORDS ACT**

11 This Court, in reaching its interpretation of the relevant portions of the Nevada Public
12 Records Act, first searched the Constitutional underpinnings of the Act. The Act does not
13 have any direct basis in either the United States or Nevada Constitutions. As stated by Potter
14 Stewart, former Associate Justice of the United States Supreme Court, the public's right to
15 access public records only indirectly springs from the Constitution:

16 There is no constitutional right to have access to particular
17 government information, or to require openness from the
18 bureaucracy. . . . The public's interest in knowing about its
19 government is protected by the guarantee of a Free Press, but the
20 protection is indirect. The Constitution itself is neither a Freedom
21 of Information Act, nor an Official Secrets Act.

22 Potter Stewart, *Or of the Press*. 26 Hastings LJ 631, 636 (1975).

23 Although there is no direct Constitutional requirement of the government to provide
24 the public with easy access to public records, the public's right to know is essential to our
25 democracy. In the Preamble to Nevada's Public Records Act, the Nevada Legislature
26 declared: "The Legislature herby finds and declares that: 1. the purpose of this chapter is to
27 foster democratic principles by providing members of the public with access to inspect and
28 copy public books and records to the extent permitted by law; [and that] 2. [t]he provisions of
this chapter must be construed liberally to carry out this important purpose." NRS 239.001.

...

1 The Nevada Supreme Court has held that the purpose of the Nevada Public Records
2 Act is to “ensure the accountability of the government to the public by facilitating public
3 access to vital information about governmental activities.” *DR Partners v. Board of County*
4 *Com'rs. Of Clark County*, 116 Nev, 616, 621 (2000). *See also John Doe Agency v. John Doe*
5 *Corp.*, 493 U.S. 146, 152 (1989) (“The basic purpose of FOIA is to ensure an informed
6 citizenry, vital to the functioning of a democratic society, needed to check against corruption
7 and to hold the governors accountable to the governed.”). Although the Media has not
8 accused Metro of wrongdoing, and neither has the Court in even the slightest manner, there
9 need not be any corruption or unaccountability as a precondition to production of documents.
10 *See National Archives and Records Admin. v. Favish*, 541 U.S. 157, 172 (2004) (“[C]itizens
11 should not be required to explain why they seek the information. A party requesting the
12 information needs no preconceived idea of the uses of data might serve. The information
13 belongs to the citizen to do with as they choose.”).

14 Given the strong public policy in favor of production, the Media must never be
15 compelled to pay an exorbitant fee to obtain records, even if the Media elects not to give any
16 reason for the request. An excessive fee is the antithesis to government accountability.

17 The Public Records Act is undoubtedly a culmination of political thought that the
18 Media best performs its watchdog function when it has ease of access to government records.
19 The government cannot frustrate the Media’s efforts to obtain information on behalf of the
20 public by charging exorbitant fees.

21 **III. THE PARTIES’ DIFFERING VIEWS**

22 The Media contends that Metro cannot charge more than 50 cents per page of
23 documents. The Media also contends that Metro must provide the electronic records (such as
24 the body cam data, 911 calls, and the dispatch logs) for free. In contrast, Metro contends that
25 the Media’s request requires an extraordinary use of personnel and technological resources,
26 thereby entitling Metro to charge its actual cost to compile and copy the requested documents
27 and data. Both sides are wrong.

28 ...

1 Metro tries to get to Nevada's legislative history to reveal tidbits of words that it might
2 support its position to charge the Media for its staff time to gather the requested documents.
3 To do so, Metro claims the Act is ambiguous. Metro sees an ambiguity because the first part
4 of NRS 239.055 permits Metro to charge an extra 50 cents per page fee if the request requires
5 Metro to use extraordinary services. Metro then sees an inconsistency because the second part
6 of NRS 239.055 restricts Metro to charging no more than its actual costs for the extraordinary
7 use.

8 The various rules of statutory construction do not support Metro's argument.

9 First, this Court must interpret the Act in a manner that avoids an absurd or
10 unreasonable result. *Leven v. Frye*, 123 Nev. 399 (2007). It would be both absurd and
11 unreasonable to think the Legislature in one breath said the government could charge 50 cents
12 per page and then in the very next breath ignore the "50 cent" rule in favor of a much more
13 expansive "actual cost" rule.

14 Second, the Court must examine the context of the Act by "considering the reason or
15 spirit of the law or the causes which induced the legislation to enact it." *Welfare Div. of State*
16 *Dept. of Health, Welfare and Rehabilitation v. Washoe County Welfare Dept.*, 88 Nev. 635,
17 637 (1972). The evident purpose of the legislation in enacting the Public Records Act was to
18 limit fees to insure the public's ease of access to government documents – the people's
19 documents. Metro's interpretation gives an unreasonably expansive "actual cost" entitlement
20 to the government entity in responding to records request. This interpretation is plainly
21 inconsistent with the Legislators' expressed intent in the preamble to the Act. NRS 239.001.

22 Third, "this [C]ourt must give [the Act's] terms their plain meaning, considering its
23 provisions as a whole, so as to read them in a way that would not render words or phrases
24 superfluous or make a provision nugatory." *Arguello v. Sunset Station*, 127 Nev. 365, 370
25 (2011). Metro's interpretation would render the "50 cent" rule nugatory, when a more
26 reasonable interpretation could be found by reading the Act as a whole, giving reasonable
27 meaning to all terms.

28 . . .

1 “When a statute is clear on its face, [the Court] will not look beyond the statute’s plain
2 language.” *Washoe Medical Center v. Second Judicial District Ct.*, 122 Nev. 1298, 1303
3 (2006). Given the clarity of the Act, it is not the role or responsibility of this Court to
4 consider the propriety of the Act as adopted by the Nevada Legislature; it is not the role or
5 responsibility of this Court to insure the Nevada Legislature properly considered and weighed
6 the public policies implicated by the Act; it is not the role or responsibility of this Court to
7 consider the impact the Act might have on the resources of Metro. The Court must presume
8 that the Nevada Legislature already did all of this. All that remains for this Court is to
9 correctly apply the Act as written to the specific facts of this case.

10 Below the Court has grouped the various categories of records based on the various
11 rules that apply to each group.

12 **IV. THE “50 CENT” RULE AS APPLIED TO EVIDENCE LOGS AND**
13 **INTERVIEW REPORTS**

14 By referencing a per “page” fee, the Nevada Legislature clearly expressed its intent
15 that NRC 239.055 applies only to hard copies of documents, and pages of documents that are
16 stored electronically. This provision encompassed the evidence logs and the interview
17 reports.

18 The starting point in determining fees for documents such as evidence logs and
19 interview reports is NRS 239.052. This provision permits Metro to charge its “actual cost”
20 “for providing a copy,” “except as otherwise provided [in other sections of the Act].” Metro
21 and the Media both agree that these words allow the government to bill for the actual cost of
22 making duplicates of the records, and the cost of the medium used (*i.e.* DVD, CD, flash drive,
23 hard drive, etc.). The Court agrees. The Nevada Legislature already showed that it
24 recognized the difference between – on the one hand: the cost of merely duplicating the
25 records and providing them on some form of medium (hereinafter the “COPY COSTS”), and
26 on the other hand: the costs for staff to gather the documents, maintain and update the data
27 system to facilitate the production, consultations necessary to comply with the request, and
28 quality control (hereinafter referenced as the “PRE-COPY PREPARATIONS”).

1 As already stated above, it bears repeating here that NRS 239.055 allows the
2 government to charge an additional amount above and beyond the "COPY COSTS" if the
3 project required the government entity to incur "extraordinary" use of personnel and
4 technological resources. It says: "[T]he government entity may, in addition to any other fee
5 authorized pursuant to this chapter, charge a fee not to exceed 50 cents per page for such
6 extraordinary use." The provision goes on to say that the government cannot bill for more
7 than its actual costs for extraordinary use of staff. In sum, in the event of extraordinary use,
8 Metro can charge for its "COPY COSTS," plus its "PRE-COPY PREPARATIONS," not to
9 exceed 50 cents per page. This part of the Act could not be clearer.

10 The court finds that the Media's request here does indeed require Metro to incur
11 extraordinary use of staff time, thereby implementing the "50 cent" rule for documents.
12 Petitioner has requested a massive amount of documents and information. Petitioner has
13 requested several different categories of documents. Petitioners' request will require several
14 Metro officers, technological personnel, equipment and supervisors. Petitioners' request will
15 require Metro to conduct extensive redactions of confidential and private data. Petitioners'
16 request will require an effort by Metro over a period of at least six (6) months. Finally,
17 Petitioners' request might interfere with Metro's ability to protect the health, welfare, and
18 safety of the public. For all these reasons, the Court finds that the Media's request will
19 involve "extraordinary use," and triggers the 50 cents per page additional allowance.

20 Recognizing that Metro will incur "extraordinary use" of staff and resources, it is easy
21 to calculate the rate that Metro may charge. In its published list of rates, Metro stated that its
22 basic "COPY COSTS" are 31 cents per page.¹ Since the work is extraordinary here, Metro is
23 entitled to charge an extra 50 cents, for a total charge of 81 cents to comply with the Media's
24 obligation to turnover copies of the evidence logs and interview reports.²

25 ¹ At the next hearing, Metro must provide proof that its 31 cents per page charge is equal
26 to or less than its actual costs.

27 ² In giving Metro the full 50 cents, the Court makes the assumption that Metro's
28 extraordinary use of staff would exceed 50 cents when amortized over the total number of
copies to be made.

1 **V. "GEOGRAPHIC INFORMATION SERVICES" RULE AS APPLIED TO**
2 **DISPATCH LOGS**

3 NRS 239.054 carves out one exception which permits Metro to charge the "pre-copy
4 preparations." This exception applies to data that is part of a "geographic information
5 systems." A "geographic information system" is "a system of hardware, software and data
6 files on which spatially oriented geographical information is digitally collected, stored,
7 managed, manipulated, analyzed and displayed." Metro concedes that only the dispatch logs
8 fall into this category.

9 The Nevada Legislature in NRS 239.054 made it clear that the government may
10 charge for the pre-copy preparations (limited to actual costs) plus the actual COPY COSTS,
11 and there is no 50 cent limit.

12 **VI. "FEE FOR PROVIDING" RULE AS APPLIED TO BODY CAM, AND 911**
13 **CALLS**

14 As for the body cam recordings, and 911 calls, these recordings are electronic forms of
15 data not capable of being printed out on a "per page" basis. As previously stated, NRS
16 239.052 permits the government to charge only the COPY COSTS, capped by actual costs.
17 This rule applies to electronic data, and is not subject to the 50 cent cap.

18 There is nothing in the Act that permits Metro to bill the Media for pre-copy
19 preparations. NRS 239.054 applies to geographic information systems – not applicable to
20 body cam data or 911 calls. NRS 239.055 applies to documents – not electronic records that
21 are not susceptible to being printed out on a page by page basis. There is simply nothing in the
22 Act other than NRS 239.052 that applies to body cam recordings or 911 calls. The Nevada
23 Legislature has spoken quite clearly on this issue. The Court cannot go beyond the language
24 and recreate in Metro an entitlement to bill for the staff and other resources needed as part of
25 the pre-copy preparations.

26 Metro sought to bill the Media to compile and produce 748 hours of body cam
27 recordings. Metro argued that it needs to assign personnel to spend from 4675 to 9163 hours
28 to perform initial reviews of the data, to redact confidential and privileged portions of the

1 data, and to perform quality control, all at a rate of \$50 per hour. This translates to a fee of
2 \$233,750 to \$458,159. Nevada law does not permit Metro to charge the Media these amounts
3 to compile the body cam data. Metro is limited to charging the Media only its actual cost to
4 make duplications of the recordings, and the actual cost of the medium to which the
5 recordings are transferred.

6 **VII. SUMMARY OF FEES ALLOWED**

7 In sum, Metro is allowed by law to charge the following fees, but no greater, to
8 properly respond the Media's request pursuant to the public records request:

9	Evidence Logs, and Interview Reports:	COPY COSTS of 31 cents per page, plus an
10		additional 50 cents for extraordinary services,
		for a total of 81 cents.
11	Body Cams, and 911 Calls:	COPY COSTS – meaning only the actual
12		costs to reproduce the records onto the
13		medium for transfer, and the cost of such
		medium (such as DVD, CD, flash drive, hard
		drive, etc.).
14	Dispatch Logs:	PRE-COPY PREPARATIONS, meaning
15		actual cost to gather, discuss, supervise and
16		insure quality control, as part of the effort to
		comply with the Media's request.

17 The Court grants Metro the minimum period of six months to produce all of the
18 requested documents. Metro must begin its production of records to the Media within three
19 (3) business days from the date of this Order. Metro must make a rolling production, meaning
20 groups of documents must be produced as they become available. Metro must provide the
21 Media with an estimate of the allowable fees that are charged to the Media, consistent with
22 this Order, within three (3) business days from the date of this Order. The Media may pay
23 this amount in six monthly equal installments. The Media must pay each month at least one
24 sixth of the anticipated total charge at the beginning of each month of production.

25 ...
26 ...
27 ...

28

1 The Court hereby sets a further Status Check for March 28, 2018 at 10:00 a.m. to
2 handle any lingering issues, to address any party's request for a modification of this Order,
3 and requests for any clarification.

4 **IT IS SO ORDERED.**

5 Dated this 9th day of March, 2018.

6
7 
8 RICHARD F. SCOTTI
DISTRICT COURT JUDGE

9
10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on or about the date signed, a copy of this Order was electronically
12 served and/or placed in the attorney's folder maintained by the Clerk of the Court and/or
13 transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper
14 parties as follows:

15 Joel E. Tasca, Esq.
16 Justin A. Shiroff, Esq.
BALLARD SPAHR
17 *Counsel for Petitioner*

18 Margaret A. McLetchie, Esq.
19 Aline M. Shell, Esq.
MCLETCHIE SHELL LLC
Counsel for Petitioner LVRJ

20 Craig R. Anderson, Esq.
21 Nick D. Crosby, Esq.
22 Jackie V. Nichols, Esq.
MARQUIS AURBACH COFFING
Counsel for Respondent LVMPD

23
24 */s/ Melody Howard*

25 _____
26 Melody Howard
27 Judicial Executive Assistant
28

Richard F. Scotti
District Judge

Department Two
Las Vegas, NV 89155